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CV 09-02-5383
FILED
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U.S. DISTRICT COURT E.D.N.Y.
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BROOKLYN OFFICE

WEXLER, J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
ISAAC COHEN, M.D.

Plaintiff,

-against-

PROVIDENT LIFE AND CASUALTY
INSURANCE COMPANY

Defendant.
----- x

Docket No.:

LINDSAY, M.J.

Jury Trial

**COMPLAINT FOR
DECLARATORY JUDGMENT**

Plaintiff, Isaac Cohen, M.D. ("Dr. Cohen"), by and through his attorneys, Schindel,
Farman, Lipsius, Gardner & Rabinovich LLC, alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff, Dr. Cohen, is a resident of Nassau County, New York.
2. Upon information and belief, defendant, Provident Life and Casualty Insurance Company ("Provident"), is a Tennessee company, licensed and authorized to transact business in the State of New York with its principal place of business in Tennessee.
3. There is complete diversity of citizenship between plaintiff and defendant.
4. The amount in controversy between the parties exceeds the sum of \$75,000 exclusive of interest and costs.
5. The jurisdiction of this Court is founded under 28 U.S.C. 1332(a) and 28 U.S.C 2201.

6. Venue in this district is proper under 28 U.S.C. 1391 because a substantial part of the events giving rise to this action occurred in this district.

THE POLICY

7. Provident issued to Dr. Cohen Individual Disability Policy Number 36-337-6072590 (the "Provident Policy").

8. The Provident Policy provides a monthly benefit of \$12,000 in the event of total disability.

9. The Provident Policy provides:

MAXIMUM BENEFIT PERIODS FOR TOTAL DISABILITY

Injuries:

Total Disability starting before your 65 th birthday	for life
Total Disability starting on or after your 65 th birthday but before your 75 th birthday	24 months
Total Disability starting on or after your 75 th birthday	12 months

Sickness:

Total disability starting before your 61 st birthday...to your 65 th birthday	
Total Disability starting on or after your 61 st birthday but before your 62 nd birthday	48 months
Total Disability starting on or after your 62 nd birthday but before your 63 rd birthday	42 months
Total Disability starting on or after your 63 rd birthday but before your 64 th birthday	36 months
Total Disability starting on or after your 64 th birthday but before your 65 th birthday	30 months
Total Disability starting on or after your 65 th birthday but before your 75 th birthday	24 months
Total Disability starting on or after your 75 th birthday...	12 months

AS AND FOR A FIRST CAUSE OF ACTION

10. On May 17, 1999, Dr. Cohen was injured in an automobile accident and sustained injuries to his hands arising from that accident.

11. On September 22, 2000, Dr. Cohen sustained additional injuries to his hands, and cervical and lumbar spine injuries arising from an automobile accident.

12. In July of 2001, Dr. Cohen sustained severe injuries to his hands.

13. In 2003 Dr. Cohen was diagnosed with Pan trapezial arthritis Osteoarthritis right basal joint, thumb with subluxation and instability and mild to moderate medial nerve compression of the right carpal tunnel arising from the July 2001 injury as well as from the 1999 and 2000 accidents.

14. Dr. Cohen filed a claim with Provident for disability benefits under the Provident Policy and claimed disability benefits due to injury.

15. Provident determined that Dr. Cohen was totally disabled as of April 1, 2003 and began paying total disability benefits of \$12,000, subject to the elimination period.

16. Beginning from April 1, 2003 and continuing to the present, Dr. Cohen has been disabled due to injuries.

17. Provident has asserted that Dr. Cohen's disability arose from sickness.

18. Provident has asserted that Dr. Cohen is only entitled to disability benefits until he reaches age 65.

19. Dr. Cohen is entitled to benefits of \$12,000 per month from June 22, 2009 to the present, for a total of \$63,600.

AS AND FOR A SECOND CAUSE OF ACTION

20. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 19 as if set forth herein at length.

21. Dr. Cohen is entitled to a declaration that he is totally disabled as the result of injuries.

22. Dr. Cohen is entitled to a declaration that he is entitled to disability benefits for life.

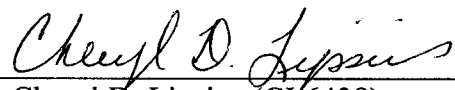
23. As Dr. Cohen has a life expectancy of 16.8 additional years, the expected future benefit exceeds \$2.4 million.

WHEREFORE, plaintiff Isaac Cohen, M.D. respectfully requests that the Court enter a judgment against defendant declaring that:

- a. Dr. Cohen is owed past disability benefits of \$12,000 per month from June 22, 2009 to the present;
- b. Declaration that Dr. Cohen's disability arose from injuries and therefore he is entitled to disability benefits for life;
- c. Interest and costs; and
- d. Such other relief as this Court deems just and proper.

Dated: New York, New York
December 3, 2009

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